

## Public Contracts, Dept. of Labor

## § 50-201.4

articles, or equipment included in the contract.

(d) No part of the contract will be performed nor will any of the materials, supplies, articles, or equipment to be manufactured or furnished under said contract be manufactured or fabricated in any plants, factories, buildings, or surroundings or under working conditions which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of the contract. Compliance with the safety, sanitary, and factory inspection laws of the State in which the work or part thereof is to be performed shall be prima facie evidence of compliance with this paragraph.

(e) Any breach or violation of any of the foregoing representations and stipulations shall render the party responsible therefor liable to the United States of America for liquidated damages, in addition to damages for any other breach of the contract, in the sum of \$10 per day for each person under 16 years of age, or each convict laborer knowingly employed in the performance of the contract, and a sum equal to the amount of any deductions, rebates, refunds, or underpayment of wages due to any employee engaged in the performance of the contract; and, in addition, the agency of the United States entering into the contract shall have the right to cancel same and to make open-market purchases or enter into other contracts for the completion of the original contract, charging any additional cost to the original contractor. Any sums of money due to the United States of America by reason of any violation of any of the representations and stipulations of the contract as set forth herein may be withheld from any amounts due on the contract or may be recovered in a suit brought in the name of the United States of America by the Attorney General thereof. All sums withheld or recovered as deductions, rebates, refunds, or underpayments of wages shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employees who have been paid less than minimum rates of pay as set forth in such contracts and on whose account such sums were withheld or recovered: *Provided*, That no claims by employees for such payments shall be entertained unless made within 1 year from the date of actual notice to the contractor of the withholding or recovery of such sums by the United States of America.

(f) The contractor shall post a copy of the stipulations in a prominent and readily accessible place at the site of the contract work and shall keep such employment records as are required in the regulations under the act available for inspection by authorized representatives of the Secretary of Labor.

(g) The contractor is not a person who is ineligible to be awarded Government con-

tracts by virtue of sanctions imposed pursuant to the provisions of section 3 of the act.

(h) No part of the contract shall be performed and none of the materials, articles, supplies or equipment manufactured or furnished under the contract shall be manufactured or furnished by any person found by the Secretary of Labor to be ineligible to be awarded Government contracts pursuant to section 3 of the act.

(i) The foregoing stipulations shall be deemed inoperative if this contract is for a definite amount not in excess of \$10,000.

[7 FR 4494, June 16, 1942, as amended at 7 FR 11086, Dec. 30, 1942; 11 FR 6238, June 8, 1946. Redesignated at 24 FR 10952, Dec. 30, 1959, and amended at 27 FR 306, Jan. 11, 1962; 27 FR 4556, May 12, 1962; 34 FR 6687, Apr. 19, 1969; 34 FR 7451, May 8, 1969; 51 FR 12266, Apr. 9, 1986. Redesignated and amended at 61 FR 40716, Aug. 5, 1996]

### § 50-201.4 Statutory exemptions.

Inclusion of the stipulations enumerated in § 50-201.1 is not required in the following instances:

(a) Where the contracting officer is authorized by the express language of a statute to purchase "in the open market", or where a purchase of articles, supplies, materials or equipment, either in being or virtually so, is made without advertising for bids under circumstances bringing such purchase within the exception to the General Purchase Statute, R.S. 3709, that is, where immediate delivery is required by the public exigency.

(b) Where the contract relates to perishables, including dairy, livestock, and nursery products ("perishables" covers products subject to decay or spoilage and not products canned, salted, smoked, or otherwise preserved);

(c) Where the contract relates to agricultural or farm products processed for first sale by the original producers;

(d) Where the contract is by the Secretary of Agriculture for the purchase of agricultural commodities or the products thereof;

(e) Where the contract is with a common carrier for carriage of freight or personnel by vessel, airplane, bus, truck, express, or railway line, where published tariff rates are in effect;

(f) Where the contract is for the furnishing of service by radio, telephone, telegraph, or cable companies, subject to the Federal Communications Act of

## § 50-201.101

1934 (48 Stat. 1064 as amended; 47 U.S.C. chapter 5).

[Regs. 504, 1 FR 1626, Sept. 19, 1936, as amended at 9 FR 8347, July 22, 1944. Redesignated at 24 FR 10952, Dec. 30, 1959, and further redesignated at 61 FR 40716, Aug. 5, 1996]

### § 50-201.101 Employees affected.

The stipulations shall be deemed applicable only to employees engaged in or connected with the manufacture, fabrication, assembling, handling, supervision, or shipment of materials, supplies, articles, or equipment required under the contract, and shall not be deemed applicable to employees performing only office or custodial work, nor to any employee employed in a bona fide executive, administrative, professional, or outside salesman capacity, as those terms are defined and delimited by the regulations (29 CFR part 541) applicable during the period of performance of the contract under section 13(a)(1) of the Fair Labor Standards Act of 1938, as amended.

[35 FR 17782, Nov. 19, 1970. Redesignated at 61 FR 40716, Aug. 5, 1996]

### § 50-201.102 Overtime.

(a) Employees engaged in or connected with the manufacture, fabrication, assembling, handling, supervision, or shipment of materials, supplies, articles, or equipment used in the performance of the contract may be employed in excess of 40 hours in any one week: *Provided*, Such persons shall be paid for any hours in excess of 40 hours in any one week the overtime rate of pay which has been set therefor by the Secretary of Labor.

(b) Until otherwise set by the Secretary of Labor the rate of pay for such overtime shall be one and one-half times the basic hourly rate received by the employee. The "basic hourly rate" means an hourly rate equivalent to the rate upon which time-and-one-half overtime compensation may be computed and paid under section 7 of the Fair Labor Standards Act of 1938, as amended. The basic hourly rate may, in no case, be less than the applicable minimum wage.

(c) If in any one week or part thereof an employee is engaged in work covered by the contract's stipulations, overtime shall be paid for any hours

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worked in excess of 40 hours in any one week at the overtime rate set forth in paragraph (b) of this section.

(d) The overtime pay requirements of this section shall be deemed to be complied with in the case of any employee employed as provided in section 7(b) of the Fair Labor Standards Act of 1938, as amended, pursuant to the provisions of paragraph (1) or (2) of that section.

[7 FR 4494, June 16, 1942, as amended at 18 FR 1832, Apr. 2, 1953. Redesignated at 24 FR 10952, Dec. 30, 1959, as amended at 51 FR 12266, Apr. 9, 1986. Redesignated at 61 FR 40716, Aug. 5, 1996]

### § 50-201.103 Dealer as agent of undisclosed principal.

Whenever a dealer, to whom a contract within the act and regulations in this part has been awarded, causes a manufacturer to deliver directly to the Government the materials, supplies, articles, or equipment required under the contract, such dealer will be deemed the agent of the manufacturer in executing the contract. As the principal of such agent the manufacturer will be deemed to have agreed to the stipulations contained in the contract.

[1 FR 2359, Nov. 28, 1936. Redesignated at 24 FR 10952, Dec. 30, 1959, and further redesignated at 61 FR 40716, Aug. 5, 1996]

### § 50-201.104 Protection against unintentional employment of underage minors.

An employer shall not be deemed to have knowingly employed an underage minor in the performance of contracts subject to the Act if, during the period of the employment of such minor, the employer has on file an unexpired certificate of age issued and held pursuant to regulations issued by the Secretary of Labor under section 3(1) of the Fair Labor Standards Act of 1938 (29 CFR 570.121), showing that such minor is at least 16 years of age.

[52 FR 6147, Mar. 2, 1987. Redesignated at 61 FR 40716, Aug. 5, 1996]

### § 50-201.105 Hours worked.

In determining the hours for which an employee is employed, there shall be excluded any time which is excluded by section 3(o) of the Fair Labor Standards Act of 1938, as amended, from the